

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**
1101 K Street, N.W., Suite 201
Washington, D.C. 20005

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of the Federal Bureau of Investigation (“FBI”), a component of defendant U.S. Department of Justice (“DOJ”), to disclose to CREW documents related to the source of the leak of information to Rudolph Giuliani in October 2016 that then-FBI Director James B. Comey was going to reopen the investigation into former Secretary of State Hillary Clinton’s use of a personal email system.

2. This case seeks declaratory relief that DOJ is in violation of the FOIA, 5 U.S.C. § 552(a)(6)(E)(i), for failing to provide CREW all responsive records, and injunctive relief ordering defendant DOJ to process and release to CREW immediately the requested records in their entirety.

Jurisdiction and Venue

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

5. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. The FBI is a component within DOJ. Defendant has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

Statutory and Regulatory Background

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records

it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. An agency's failure to make this determination within 20 days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

Factual Background

9. On October 28, 2016, 11 days before the election, then-FBI Director Comey sent a letter to Congress announcing that the FBI was reopening its investigation into Hillary Clinton's emails in light of new information found, but not yet examined by the FBI.

10. Two days earlier Mr. Giuliani, a prominent Trump supporter, telegraphed this announcement on *Fox News*, stating, "I do think that all of these revelations about Hillary Clinton are beginning to have an impact. He's got a surprise or two that you're going to hear about in the next two days." Mr. Giuliani previously served as the U.S. Attorney for the Southern District of New York, a position in which he worked closely with the FBI's New York field office.

11. Mr. Giuliani subsequently admitted that he had received advance notice of this development, stating on *Fox News* on November 4, 2016, "Did I hear about it? You're darn right I heard about it. And I can't even repeat the language that I heard."

12. In April 2018, when asked whether Mr. Giuliani had received advance notice from the FBI about the FBI's reopening of its investigation, then-FBI Director James Comey stated that based on the publicity on this issue he had "commissioned an investigation to see if we could understand whether people were disclosing information out of the New York office or any other place that resulted in Rudy's report on *Fox News* and other leaks that we were seeing in the media."

13. In recent testimony before the House Judiciary and Oversight Committees Mr. Comey confirmed that he had ordered a leak investigation after Mr. Giuliani's public statements indicated he had inside knowledge of the FBI's investigation into Hillary Clinton that appeared to stem from his communications with people in the FBI's New York field office.

14. Any unauthorized disclosure of information about an FBI investigation would violate the Privacy Act, 5 U.S.C. § 552a(b) and the Hatch Act, 5 U.S.C. § 7323(a)(1), if the disclosure was made with the purpose of affecting the result of the election. CREW therefore filed a FOIA request with the FBI by facsimile on April 26, 2018, to shed light on whether FBI agents and employees violated federal law. CREW requested copies of all records pertaining to the FBI's investigation of the source of the leak of information to Mr. Giuliani in October 2016 that Mr. Comey was going to reopen the investigation into then-presidential candidate Hillary Clinton's use of a personal email system.

15. CREW's request explained that given Mr. Giuliani's then-newly acquired role as counsel for President Trump for Special Counsel Robert Mueller's investigation and his very high public profile, the public also has a significant interest in knowing to what extent Mr. Giuliani participated in the disclosure of information that many believe was responsible for Secretary Clinton's defeat. Some have suggested his role as "an active purveyor of pre-election leaks about the FBI probe into Hillary Clinton's emails" could pose a conflict if he becomes a witness in any case Special Counsel Mueller brings. Josh Gerstein and Darren Samuelsohn, Giuliani's History Raises Legal Questions as He Takes on Trump Defense, *Politico*, Apr. 21, 2018, available at <https://www.politico.com/story/2018/04/21/giuliani-trump-defense-questions-544703>.

16. By letter dated May 4, 2018, the FBI acknowledged receiving CREW's request. The FBI stated that CREW's request for a public interest fee waiver was under consideration and that the status of CREW's request would be updated in the FBI's public website, <http://vault.fbi.gov>.

17. To date, CREW has received no other communications from the FBI, nor has the FBI posted on its website documents responsive to CREW's FOIA request.

18. CREW has now exhausted all applicable administrative remedies with respect to its request of the FBI.

PLAINTIFF'S CLAIM FOR RELIEF

19. Plaintiff repeats and re-alleges paragraphs 1-18.

20. Plaintiff properly asked for records within the custody and control of DOJ.

21. Defendant DOJ wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request.

22. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Order defendant Department of Justice to immediately and fully process plaintiff's April 26, 2018 FOIA request to the FBI and disclose all non-exempt documents immediately to plaintiff;

(2) Issue a declaration that plaintiff is entitled to immediate processing and disclosure of the requested records;

- (3) Provide for expeditious proceedings in this action;
- (4) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (5) Award plaintiff its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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